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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/694,927	10/24/2000	Victor T. Huang	8863.73US01	1712

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EXAMINER

TRAN LIEN, THUY

ART UNIT PAPER NUMBER

1761

DATE MAILED: 09/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/694,927

Applicant(s)

HUANG ET AL.

Examiner

Lien T Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,7,9,25,26 and 28-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,7,9,25,26 and 28-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

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Claims 1,2,9, 25-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nobuyuki.

Nobuyuki discloses a batter dough containing wheat flour and 10-60 part by weight dextrin. The dextrin has a DE of 2-20. The batter is baked into a sheet; the resulting baked product is conically rolled up and formed into a waffle cone. The waffle cone is unleavened.

Nobuyuki does not the modulus as claimed, the form of the wafer as in claims 28-31, the frozen desert as in claim 25 and the mixing of the baked good in the frozen desert.

The Nobuyuki product contains a starch hydrolysate having a DE in the range claimed; thus, it is obvious the product will have the modulus as claimed since it is the inclusion of the hydrolysate that gives the desired modulus. The product is a waffle cone, it would have been obvious to put fillings such as ice cream, yogurt etc in it because waffle cone is used for such purpose. It would have been obvious to form the waffle in any shape desired. The selection of the shape would have been an obvious matter of preference. It would also have been obvious to mix the waffle into the frozen desert to obtain products having different taste, flavor and texture. This is notoriously well known in the art; for example, oreo cookies is mixed in with ice cream to obtain oreo ice cream or cookies is mixed in with ice cream to obtain cookie-cream ice cream. As to the moisture content, it would have been obvious to make the product having various moisture content depending on the degree of dryness desired.

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Claims 1-3,7, 9, and 25-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finley et al ( EPO 0192542).

Finley et al disclose a dough and baked good made from such dough. The dough contains flour, water and sweeteners. The sweeteners are maltodextrin having a DE of 5-15, humectant sugars such as maltose, corn syrup, invert sugar etc and sucrose. The dough comprises no more than about 70% by weight the sweetening agent which comprises the maltodextrin, sucrose and humectant sugar. The amounts of maltodextrin and humectant sugar used can vary depending upon the desired taste of the cookies. The inclusion of leavening agent is optional because Finley et al disclose the amount of leavening is from 0-5%. The moisture content of the bake product is about 5% or above ( see columns 6-7,10 and the examples)

Finley et al do not the modulus as claimed, a wafer, the inclusion of frozen composition with the wafer, the shape of the wafer and mixing of the baked good in the frozen dessert composition..

It would have been obvious to one skilled in the art to larger amounts of maltodextrin and humectant sugar depending on the taste desired of the cookies. Finley et al teach the amounts can vary and such amounts in addition to sucrose can be no more than 70% ; so if larger amounts of maltodextrin and humectant sugars, then the amount of sucrose will be reduced. For example, one can use 40% of a combination of maltodextrin and humectant sugars and 30% sucrose; such amounts are within the teaching of Finley. Different sugars have different degree of sweetness and it would have been obvious to vary the amounts of the different types of sugar depending on the

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taste desired. As to the modulus, the Finley et al product contains the same type of sweetener claimed; thus, it is obvious the product will have the same properties as claimed. It would have been obvious to make the dough of Finley into a wafer because wafer is a type of cookie and wafer indicates that the cookie is thin. Applicant discloses in the specification the bake products can be a ice cream cone, a cookie , a wafer or a pie shell; thus, the composition that is used to make cookies can be modified to make a wafer. This modification is within the skill of one in the art because the making of a wafer is well known in the art. It would also have been obvious to include a frozen dessert such as ice cream with the cookie of Finley to obtain ice cream sandwich. This is notoriously well known in the art; there are M-M cookies having ice cream between two cookies or oreo cookies with ice cream, chocolate cookies with ice cream. It would also have been obvious to make the cookies in any shape desired; this would have been an obvious matter of reference. It would also have been obvious to mix the cookie into the frozen desert to obtain products having different taste, flavor and texture. This is notoriously well known in the art; for example, oreo cookies is mixed in with ice cream to obtain oreo ice cream or cookies is mixed in with ice cream to obtain cookie-cream ice cream.

The change in the rejection is necessitated by amendment.

Claims 1, 2-3, 7,9,25-26 and 28-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 1, the use of language such as "high resistance" is vague and indefinite because it is not known what would be considered as "high resistance". On line 6, it is not clear how the words "molecular weight" tie in with the rest of the claim since the term "high" has been deleted.

In claims 2-3, the recitation of "the baked wafer" on line 1 is confusing because claim 1 is directed to a frozen food product and claims 2-3 depends from claim 1. The language is not consistent. It is suggest applicant use this language --- The frozen food product of claim 1, wherein the baked wafer has ..... --- Also, the term "high molecular weight" does not have antecedent basis because the term "high" has been deleted in claim 1.

Claims 9 and 26,28-31 have the same problem as claims 2-3.

Claim 25 is indefinite because the claim recites "the frozen dessert composition" and claim 1 recites frozen dessert product.

Claim 32 has the same problem as claim 25.

The following clarification is requested. In claims 1-2, did applicant mean to claim a moisture content of ".9% " or was the period not properly crossed out? If the moisture content is .9%, it does not have support in the specification.

<sup>39, 30</sup>  
Claims ~~1, 2~~ rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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A moisture content of "about 2 to about 5%" in claim 1 is not disclosed in the original disclosure. The forms of the wafer as "disk" and "curved" are not disclosed in the specification.

The new 112 rejections are necessitated by amendment.

In the response, applicant comments that the references do not render the amended claims obvious. The amended claims are still deemed obvious as set forth above in the rejections.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868.

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The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

September 3, 2003

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
*Group 1700*